

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2924 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MANIBEN LAVJIBHAI

Versus

STATE OF GUJARAT

Appearance:

MR HARIN P RAVAL for Petitioners

GOVERNMENT PLEADER for Respondent No. 1, 2, 3, 4

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 19/06/98

ORAL JUDGEMENT

Rule.

In the facts and circumstances of the case the petition is taken up for final disposal today.

2. This petition under Article 226 of the Constitution challenges the order dated 28-10-1995 passed by the State Government (Annexure B) and the order dated 10-4-1996 passed by the Competent Authority (Annexure D

to the petition) under the provisions of Urban Land (Ceiling and Regulation) Act, 1976 (hereinafter referred to as the Act). BY the order at Annexure D to the petition the competent authority has declared that the petitioners are entitled to retain 600 sq.mts. of land and 84650 sq.mts. of land has been declared as excess vacant land under the provisions of the Act.

3. The petitioners' challenge is based on the contention that by the petitioners' land bearing S.No.381 situate in village Dhunvav, District Jamnagar is outside the limits of urban agglomeration of Jamnagar city and therefore, the provisions of the Act are not applicable to the land in question and therefore, there is no question of declaring the said land as excess vacant land under the provisions of the Act. The petitioners have relied upon the certificate issued by the Jamnagar Area Development Authority on 14-8-1991 to one Rasikbhai K. Tanna (Annexure H to the petition).

4. In response to the notice issued by this Court Mr.Sompura, learned AGP appears and submits that the question whether the land in question is within the limits of urban agglomeration of Jamnagar city or not is a question of fact and since the said question was not raised before the authorities it is not open to the petitioners to raise the same before this Court.

5. In rejoinder, Mr.Raval learned Counsel for the petitioners submits that although the aforesaid question may be a question of fact, it is a jurisdictional question which goes to the root of the matter and therefore, the order passed by the competent authority is without jurisdiction.

6. Having heard the learned Counsel for the parties, this Court is of the view that instead of entertaining this petition and requiring the authorities to file affidavit on the aforesaid factual aspect, it would be better to dispose of the petition with a direction to the competent authority to hear the petitioners and to decide the question whether the land in question is within or outside the limits of Jamnagar Urban Agglomeration . It would be for the competent authority to hear the petitioners and also consider the material which may be produced before the competent authority by the petitioners as well by any other public authority and thereafter to take decision in accordance with law. It

Till the competent authority takes a decision on the aforesaid issue parties shall maintain status quo

regarding the land in question.

7. If ultimately the Competent authority comes to the conclusion that the land is within the limits of Urban Agglomeration of Jamnagar city, nothing further would be required to be done and the orders under challenge shall become operative. However, if ultimately the decision is that the land is outside the limits of Urban Agglomeration, obviously the order would be without jurisdiction and therefore, the respondents shall revoke the impugned orders and shall not act upon them. In case the ultimate decision is that a part of the land in question is within the Jamnagar Urban Agglomeration and the remaining part is outside it, then the respondents will apply the provisions of the Act only to the portion of the land which is within the Urban Agglomeration. This is too obvious to require any further elaborate discussion. If any authority is required the same is to be found in the decision of this Court in Special Civil Application No.2821 of 1996 as confirmed in LPA No. 365 of 1997.

8. This petition is accordingly disposed of with a direction to the competent authority and Deputy Collector, Urban Land Ceiling, Jamnagar, respondent no.3 herein, to decide the question whether the land bearing S.No. 381 in village Dhunvav, District Jamnagar is within the limits of the Jamnagar Urban Agglomeration or outside the said limits, within a period of three months from the date of receipt of a copy of this order and to take further action, if any, in light of the forgoing discussion in this judgment.

9. Rule is made absolute to the aforesaid extent with no order as to costs.

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